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General Assembly

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Sixty-eighth session
Item 77 of the preliminary list*
Responsibility of States for internationally wrongful acts

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Comments and information received from Governments

Report of the Secretary-General

I. Introduction

1. The International Law Commission adopted the articles on responsibility of States for internationally wrongful acts ("State responsibility articles") at its fifty-third session, in 2001. In its resolution 56/83 of 12 December 2001, the General Assembly took note of the State responsibility articles adopted by the Commission, the text of which was annexed to that resolution, and commended them to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action.

2. In its resolutions 59/35 of 2 December 2004 and 62/61 of 6 December 2007, the Assembly requested the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles. Following its consideration of the written comments received from Governments,[1] as well as the compilations of decisions prepared by the Secretary-General,[2] the General Assembly, in its resolution 65/19 of 6 December 2010, once again commended the State responsibility articles to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. The Assembly reiterated its request that the Secretary-General invite Governments to submit their written comments on any future action regarding the articles and also requested the Secretary-General to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles. In addition, the Assembly decided to further examine, at its sixty-eighth session, within the framework of a working group of the Sixth Committee, and with a view to taking a decision, the

* A/68/50.

[1] See A/62/63 and Add.1 and A/65/96 and Add.1.

[2] See A/62/62 and Corr.1 and Add.1 and A/65/76.

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question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.

3. By notes verbales dated 10 March 2011 and 19 January 2012, the Secretary-General invited Governments to submit, no later than 1 February 2013, their written comments on any further action regarding the State responsibility articles.

4. As at 27 March 2013, the Secretary-General had received written comments from Chile (dated 26 March 2013), El Salvador (dated 18 January 2013), Kenya (dated 2 February 2012), Lebanon (dated 19 October 2011), Panama (dated 19 April 2012) and Qatar (dated 26 June 2012). The comments by Chile, El Salvador and Qatar are reproduced below.[3]

II. Comments on any future action regarding the articles on responsibility of States for internationally wrongful acts

Chile

[Original: Spanish]
[26 March 2013]

With the submission of the draft articles in 2001, the International Law Commission concluded a long-term endeavour. Since that time, while Governments have been made aware of the articles, there has not been any significant progress towards their eventual adoption, demonstrating the complexity of reaching consensus on the issue. Moreover, States have invariably recognized the importance of the articles, seemingly demonstrating the importance they attach to this effort. As noted in the report of the Secretary-General containing a compilation of decisions of international courts, tribunals and other bodies (A/65/76), references to the articles have appeared in a range of jurisprudence, including that of, inter alia, the International Court of Justice, the Appellate Body of the World Trade Organization, international arbitration tribunals, the Court of Justice of the European Union, the European Court of Human Rights and the Inter-American Court of Human Rights.

In the view of Chile, the issue of State responsibility is one of the pillars of international law. The responsibility of States is a general principle of international law, just like the principle of good faith in relations between States and the *pacta sunt servanda* principle. States should be accountable at the international level for their internationally wrongful acts. The fact that the articles submitted by the Commission have not been enshrined in a binding legal framework, let alone the absence of a decision regarding their future adoption more than ten years after their submission, does not support the interpretation that the importance of the articles is recognized. Our Government is of the opinion that it is unacceptable that such an issue would figure in the deliberations of the Sixth Committee every three years without any progress being made on the resulting resolution adopted.

[3] Extracts from the comments by Kenya, Lebanon and Panama, pertaining to the content of the State responsibility articles, will be made available, for the information of delegations, on the website of the Sixth Committee at the sixty-eighth session of the General Assembly (www.un.org/en/ga/sixth/).

As Chile stated in 2012 in the Ad Hoc Working Group on the Revitalization of the Work of the General Assembly, the Sixth Committee could establish special groups or working groups on responsibility of States for internationally wrongful acts in order to identify existing problems with the draft articles, with a view to facilitating their future consideration in a conference or similar venue and eventual adoption in the form of a convention, in line with the proposal by the International Law Commission.

In addition, as a transitional measure, the possibility of the adoption of the draft articles by the General Assembly in the form of a declaration could be considered as a means of advancing the decisions taken in 2001 and as a step towards reaching the objective described above.

If such initiatives are not undertaken, the draft articles could remain in their current form indefinitely.

El Salvador

[Original: Spanish]
[18 January 2013]

The articles under review are the result of the arduous and methodical work of codification and progressive development undertaken by the International Law Commission over the past six decades. Eminent special rapporteurs and important jurists and delegates from the various States Members of the United Nations have participated in this process through their respective reports and the discussions in the Sixth Committee of the General Assembly. The articles are not merely an academic document; they also reflect international custom and the established jurisprudence of international courts by recognizing that every internationally wrongful act committed by a State entails the international responsibility of that State. This in turn is a direct product of the evolution of contemporary international law, which has abandoned the concept of the omnipotence of the State to focus on higher goals and values that are common to the international community as a whole.

The responsibility of States is a fundamental principle of international law, given that a sovereign State cannot engage with other subjects of international law without being held to a certain standard of conduct or facing the consequences of actions it undertakes as part of that engagement. Asserting otherwise would imply an absence of limitations and controls at the international level.

Specifically, the Republic of El Salvador believes that the broad range of primary rules in force at the international level should be complemented by an additional set of rules to regulate the consequences of violating those primary rules. Absent such additional rules, the regulatory system that would remain in place would be extensive, but would have no mechanisms for its enforcement.

In this regard, while the responsibility of States is an indisputable principle of a customary nature, which has already been incorporated into some international treaties, the only way to ensure greater uniformity and legal certainty for the content and scope of the concept is to have it codified. Such codification would also be highly beneficial for the development of international law and the peaceful settlement of disputes, because a system that sets out the legal consequences of unlawful acts, thus allowing for the safeguards and satisfactory outcomes demanded

by the rule of law, would curb the tendency to resort to the use of force, which has so far been prompted by dissatisfaction resulting from the ineffective handling of conflicts.

The numerous international obligations of States as subjects of international law must be accompanied by general rules on responsibility for internationally wrongful acts, which would constitute the complement needed to ensure the efficacy of international law, and consequently, the achievement of its objectives.

It is crucial to take concrete steps towards codification of the responsibility of States, which will have more lasting and beneficial effects than could be achieved with a declaration or a resolution. Therefore, the Republic of El Salvador reaffirms its position in support of holding an international conference aimed at drafting a convention on the responsibility of States for internationally wrongful acts, in order to make progress on the issue and strengthen one of the fundamental pillars of international law.[4]

Qatar

[Original: Arabic]
[26 June 2012]

Qatar continues to support the establishment by the General Assembly of a specialized committee or working group tasked with considering the question of the future application of the State responsibility articles and reporting back to the Assembly.[5] The General Assembly should adopt a declaration endorsed by all States. Such a declaration would be cited in the judgements of the various international courts and other international bodies and would thus serve to make the articles more consistent, thereby facilitating the subsequent adoption of an agreement on the responsibility of States for internationally wrongful acts.

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[4] See A/65/96/Add.1.

[5] See A/65/96.